

TYPES NOT MAPPED YET July 24, 2024 | TTR not mapped yet | Barry L. Fischer

FinCEN: Disregarded Entities Need Not Obtain a Unique Tax ID Number Solely for Filing a Beneficial Ownership Information Report

The Corporate Transparency Act (CTA) requires certain entities to report information about themselves and their beneficial owners in a Beneficial Ownership Information Report (BOIR) filed with the Financial Crimes Enforcement Network (FinCEN) division of the Treasury Department. One piece of information that must be included in the BOIR is the entity's taxpayer identification number (TIN), which can take the form of an IRS Employer Identification Number (EIN), IRS Individual Taxpayer Identification Number (ITIN), Social Security Administration Social Security Number (SSN) or certain equivalent foreign tax equivalents.

Not all entities, however, had been required to get a TIN. A prime example is a so-called "disregarded entity," an entity that is disregarded for U.S. federal tax purposes and is not treated as separate from its owner. Instead, a disregarded entity's income and deductions are reported as part of its owner's federal tax return. A disregarded entity often takes the form of a limited liability company (LLC) with a single member. An entity that is treated as a disregarded entity and does not have employees is, in most cases, not required to obtain a TIN for federal tax purposes (although it may obtain a TIN if it wishes to do so).

LLCs, including single-member LLCs, are among the entities required to file BOIRs with FinCEN if they are not subject to one of the 23 exceptions from filing set forth in the CTA. The BOIR filing requires a TIN of the filing entity. This leads to a question: If a single-member LLC or other disregarded entity that was required to make a BOIR filing did not already have a TIN, would it need to get a TIN solely for the purpose of making the BOIR filing?

While the answer was not clear, there were indications in the regulations enacting the CTA that a disregarded entity that needed to file a BOIR would have to obtain its own TIN to make the filing. Moreover, until recently, FinCEN's filing platform would not permit two entities to file BOIRs containing the same ITIN, EIN or SSN, as it would report at times an error on the submission of the later report. With the January 1, 2025, deadline for filing BOIRs for entities in existence or registered prior to January 1, 2024, rapidly upcoming, it had become more urgent to get a definitive answer to the question of whether existing single-member LLCs and other disregarded entities would need their own TIN, as there are many entities of this type in existence that do not currently have their own TIN and would be required to obtain one.

On July 24, 2024, FinCEN issued an update to [its Beneficial Ownership Information- Frequently Asked Questions page](#) to clarify the type of tax identification number that should be reported by a reporting company that is disregarded for U.S. tax purposes. In a new Question and Answer F.13, FinCEN indicated that it would be consistent with the IRS rules relating to TINs with respect to BOIR TIN reporting:

- If the disregarded entity has its own EIN, it may report that EIN as its TIN.
- If the disregarded entity does not have an EIN, it is **not** required to obtain one to meet its BOIR reporting requirements so long as it can instead provide another type of TIN (or an equivalent foreign tax identification number and name of that foreign tax jurisdiction):
 - If the disregarded entity is a single-member LLC or otherwise has only one owner that is an individual with an SSN or ITIN, the disregarded entity may report that individual's SSN or ITIN as its TIN.
 - If the disregarded entity is owned by a U.S. entity that has an EIN, the disregarded entity may report that other entity's EIN as its TIN.

- If the disregarded entity is owned by another disregarded entity or a chain of disregarded entities, the disregarded entity may report the TIN of the first owner up the chain of disregarded entities that has a TIN as its TIN.

In addition, in late June, FinCEN deployed a technical fix to its filing platform that allows filers to use the same TIN in BOIRs filings for multiple entities.

While FinCEN has clarified that a disregarded entity need not obtain its own TIN solely for BOIR filing purposes, there remain many reasons for a disregarded entity to obtain one. They include, for example, alleviating the need to include the sole member's SSN in filings, requirements under payroll tax rules or other federal, state, local or foreign regulatory regimes that the entity have a unique TIN, and easing compliance matters in dealing with third parties who may require a TIN as part of internal "know your customer," anti-money laundering or similar compliance procedures.

authorsTest

barry

Barry L. Fischer